IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 8230 OF 2006

Jeetnarayan Ramnaresh Pandey.... Petitioner

versus

Bombay Municipal Corporation
Greater Bombay. ..... Respondent.

Shrishail Sakhare for the petitioner.
Shri A.J. Bhor for respondent.

CORAM; A.P. DESHPANDE, J.
DATED; 05TH SEPTEMBER, 2007

P.C.;

1. Rule. Rule made returnable forthwith. Taken up for final hearing by consent of parties.

2. The present petitioner was having a hut like structure admeasuring about 10 ft. x 20 ft. situated in Sanjay Nagar. The Respondent Corporation issued notice to the petitioner under section 351 of BMC Act calling upon the petitioner to show cause as to why the said unauthorised structure should not be demolished. The petitioner replied the notice and the Ward Officer passed an order on 17-7-2000 holding that the structure was unauthorised and need to be demolished. Aggreived by the notice under section 351 and the order passed by the Ward Officer, the

petitioner filed a M.C. suit No.4150/00 in the Bombay City Civil Court. In the said suit notice under section 351 and the order passed by the Ward Officer was challenged. A further prayer was made by the plaintiff by moving an application to restrain the respondent from demolishing the hut like structure. The City Civil Court rejected the application and aggreived thereby the present petitioner filed an appeal against the order before the High Court. The learned Single Judge granted ad-interim order in terms of prayer clause (a) of the draft Notice of Motion which reads thus:

> "Pending the hearing and final disposal of the suit this Hon'ble Court be pleased to restrain the Defendants, their officers, servants and agents by an interim order and injunction from acting upon and/or enforcing and/or demolishing the suit structure viz. the structure admeasuring 10 ft.x 20 ft. situated at Survey No.267, Hissa No.1 (Part), Near Sanjay Nagar, Pimpripada Road, Goregaon-Mulund Link Road (Gen.Arunkumar Vaidya Marg), Malad (East), Mumbai 400097, in opursuance of the notice under section 351 of the BMC Act, bearing No. WOPN/BF/VI/351/1251 of 2000 dated 22nd June, 2000 being Exhibit 'M' to the

plaint and order passed by the Ward Officer, P/North Ward of the Defendants bearing No. WOPN/10855/AEB VI dated 17-7-2000, being exhibit 'Q' to the plaint, in any manner whatsoever."

3. Despite he order dated 2-8-2000 having been passed in Appeal No. 500/00, the respondent demolished the structure on 5-8-2000. It is the case of the petitioner that his advocate had intimated the order passed by this court dated 2-8-2000 by a communication dated 3-8-2000 to the Ward Officer. Perusal of the order passed by this court dated 20-4-2007 in Contempt Petition No.322/00, it is clearly born out that the structure was demolished when the order dated 2-8-2000 was operating. In view of the changed circumstances the petitioner took out a Chamber Summons with a view to amend the plaint and the rejection of the Chamber Summons by the City Civil Court has given raise to the filing of the present writ petition.

4. The two grounds on which the Chamber Summons has been rejected are: (1) That the Chamber Summons is not maintainable as the prayer made in the Chamber Summons constitute subject matter of the Contempt Petition and (2) Inordinate delay in filing of the application. The learned counsel for the present

petiioner does not propose to incorporate the prayer clause (a-i) forming part of the schedule/proposed amendment, as the said question is already adjudicated by this court in the Contempt Petition. The other prayers are capable of being granted. The learned counsel for the petitioner has submitted that the delay by itself cannot be a ground to reject the amendment application, if the same is necessary for proper adjudication of the dispute. Obviously the suit structure has been demolished during pendency of the suit and during operation of a temporary injunction order passed by this court. Thus amendment consequent upon demolision of the structure with a view to bring subsequent event on record ought to have been permitted by the trial Court. The trial Court has committed a patent illegality in rejecting the Chamber Summons.

5. In the result, the Writ Petiiton is allowed. The prayer made in the Chamber Summons No.129/05 is granted, except prayer clause (a-i). Rule made absolute in the above terms.

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